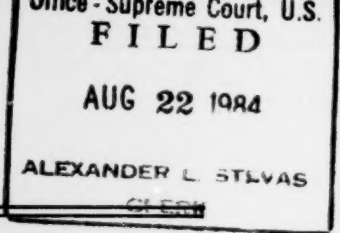


No. 83-2070



In The
Supreme Court of the United States
October Term, 1983

FIRST LEASING CORPORATION,
Petitioner,

vs.

PATRICIA ANN BROTHERS,
Respondent.

**PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**BRIEF FOR RESPONDENT
IN OPPOSITION TO PETITION**

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QUESTIONS PRESENTED FOR REVIEW

1. Whether admitted discrimination based upon marital status in a leasing transaction is embraced by the protections of the Equal Credit Opportunity Act, 15 U.S. C. Section 1691, et seq.

2. Whether the Ninth Circuit Court of Appeal properly concluded that the proposed lease below was a consumer lease under the Consumer Leasing Act.

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Respondent respectfully opposes this Petition for a
Writ of Certiorari.

OPINION BELOW

Upon a motion to dismiss brought by Petitioner, the
trial court judge treated it as one for summary judgment.

The motion was granted in favor of Petitioner, FIRST LEASING CORPORATION. (see Appendix to Petition, p. 43) Respondent appealed to the Ninth Circuit Court of Appeals who agreed with Respondent and reversed and remanded the trial court's decision below. (724 F.2d 789, 796) Petitioner's Petition for Rehearing and Request for Rehearing En Banc was denied by order filed March 28, 1984. (see Appendix to Petition, pp. 41-42) Thereafter, the Ninth Circuit of Appeal entered its order amending opinion, which order was filed on March 14, 1984. (see Appendix to Petition, pp. 38-40)

JURISDICTION

The jurisdiction of this court is invoked by Petitioner based upon 28 U.S.C. Sections 1254(1) and 2101(c) (1982).

STATEMENT OF THE CASE

Respondent, PATRICIA ANN BROTHERS (hereinafter referred to as "PATRICIA"), being desirous of establishing her own credit separate and apart from that of her husband, filled out Petitioner's document entitled "Application For Lease Credit" on or about January 25, 1982. Although PATRICIA informed Petitioner both orally and on the subject credit application that she was applying for secured credit in her sole name for the purpose of establishing her own independent credit, Petitioner demanded that she set forth all credit information regarding her spouse, James A. Garske. Additionally,

FIRST LEASING CORPORATION further required that Mr. Garske also sign the credit application.

Apparently Petitioner immediately processed PATRICIA's claim and she later received a "Statement of Credit Denial, Termination or Change" dated January 25, 1982, which based the denial of PATRICIA's credit solely upon a previous bankruptcy of PATRICIA's spouse, James A. Garske. Thereafter, on March 29, 1982, PATRICIA filed the action below seeking compensatory and punitive damages for Petitioner's flagrant violation of the provisions of the Equal Credit Opportunity Act (15 U.S.C. Section 1691 et seq.). (see Declaration of George Lyon, Appendix to Petition, pp. 45-48)

In the court below, Petitioner filed a motion to dismiss the complaint which was treated by the District Court as a motion for summary judgment and the Honorable Judge Schnacke, U. S. District Judge, entered judgment in favor of Petitioner and against PATRICIA.

PATRICIA timely filed her appeal from the trial court's decision which was argued and submitted on June 13, 1983, before the Ninth Circuit Court of Appeals. In a well reasoned decision in which the circuit court noted was a case of first impression, the Ninth Circuit held that a consumer lease such as is at issue here, is indeed a "credit transaction" as contemplated by Congress in enacting the Equal Credit Opportunity Act. The Ninth Circuit properly construed the Equal Credit Opportunity Act as being embraced within the Consumer Credit Protection Act and wisely recognized that Congress intended to prohibit the kind of admitted discrimination that Petitioner engaged in in leasing transactions, as well as sales transactions.

PATRICIA agrees with Petitioner that the Circuit Court of Appeal's decision will indeed eradicate all distinctions between leases and sales in eradicating *discrimination*. It is due to this salutary goal of eradicating discrimination in all credit transactions that the petition should be denied.

—o—

ARGUMENT IN OPPOSITION TO GRANTING OF THIS PETITION

- 1. The Ninth Circuit Recognized That The Consumer Leasing Act And The Equal Credit Opportunity Act Addressed Two Separate And Distinct Evils.**

The Consumer Credit Protection Act, 15 U.S.C. Section 1601, et seq., is the umbrella statute which Congress enacted to address the evils recognized in leasing and credit transactions. Here, Petitioner apparently concedes that PATRICIA was discriminated against as defined and prohibited by the Equal Credit Opportunity Act (hereinafter "ECOA"), but now wishes the sanction of this court to rule that regardless of Petitioner's conduct, the ECOA does not apply to consumer leasing transactions. In the circuit court of appeals, Petitioner asserted the same argument set forth in the petition, that is, that since the Consumer Leasing Act and the Equal Credit Opportunity Act are separate sections of the "umbrella statute," the Consumer Credit Protection Act, that Congress must have intended the ECOA not to apply to leasing credit transactions. The circuit court of appeals most wisely concluded that; "... it is far more reasonable to

conclude that Congress thought that an express amendment was unnecessary because the ECOA on its face applies to all credit transactions and, therefore, the language already in the Act was broad enough to cover consumer leases." (724 F.2d 789, 794 (1984))

The Ninth Circuit properly interpreted the statute consistent with the Congressional intent to further the vigorous national effort to eradicate invidious discrimination "root and branch" from our society. (see *Greene v. County School Board*, 391 U.S. 430, 438, 88 S.Ct. 1689, 1694, 20 L.Ed.2d 716 (1968))

2. The Court Of Appeals Quite Properly Calculated The Obligation Upon Which The Underlying Suit Is Based As Being Embraced Within The Consumer Leasing Act.

While it is true that had Petitioner not discriminated against PATRICIA and had leased her the automobile, the total purchase price of the vehicle would have been \$27,500.00. However, had the lease been made to PATRICIA and run its entire term of 48 months at monthly lease payments of \$339.17 per month, the total lease payments made by PATRICIA would have been \$15,848.16. Further, the automobile would have remained in Petitioner's name and the residual value would have accrued to Petitioner's benefit. (see Declaration of George Lyon, Appendix to Petition, pp. 45-48)

Thus, the proposed lease at issue here plainly was for an obligation of less than \$25,000.00 and for a period exceeding four months. (724 F.2d at 792)

CONCLUSION

The effect of the Court of Appeals decision will indeed have sweeping and profound effects on the leasing industry in eradicating the invidious discrimination which Congress recognized in enacting the Equal Credit Opportunity Act. This court should, therefore, deny the Petition for Writ of Certiorari.

Dated: August 16, 1984.

Respectfully submitted,

LAW OFFICES OF WILLIAM T. MURPHY

By: WILLIAM T. MURPHY

Attorneys for Respondent,

PATRICIA ANN BROTHERS